

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x  
5 ERIN MCKENNA,

6 Plaintiff,

7 - against -

8 SANTANDER INVESTMENT SECURITIES, INC.,

9 SANTANDER HOLDINGS, INC., and OMAR

10 KARIUKI, in his individual and

11 professional capacities,

12 Defendants.

13 -----x

14 January 28, 2022

9:30 a.m.

15  
16 DEPOSITION of OMAR KARIUKI,  
17 taken by the Plaintiff, pursuant to  
18 Notice, held remotely via Zoom  
19 videoconference, before Debbie  
20 Zaromatidis, a Shorthand Reporter and  
21 Notary Public of the State of New York.  
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A P P E A R A N C E S :

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- AND -

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Boston, Massachusetts  
BY: NICOLE P. PHE, ESQ.

ALSO PRESENT:

BRIAN DOYLE, Inhouse Counsel  
Santander Holdings, Inc.

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND  
AGREED by and between the Attorneys for  
the respective parties hereto that filing  
and sealing be and the same are hereby  
waived.

IT IS FURTHER STIPULATED AND  
AGREED that all objections except as to  
the form of the question, shall be  
reserved to the time of the trial.

IT IS FURTHER STIPULATED AND  
AGREED that the within examination may be  
signed and sworn to before any notary  
public with the same force and effect as  
though signed and sworn to before this  
Court.

1 KARIUKI

2 Q. Do you recall the year?

3 A. No.

4 Q. Okay. What about Ms. Munina?

5 A. I hired her as well, and she  
6 started last week.

7 Q. What is her position?

8 A. Emerging markets sales.

9 Q. What about Mr. Farina?

10 A. Emerging markets sales.

11 Q. I am sorry. When did you hire  
12 him?

13 A. I don't recall.

14 Q. Do you recall the year?

15 A. No.

16 Q. How did you come to learn about  
17 Mr. Farina?

18 A. I covered Chris Farina. He was  
19 one of my clients. I have known him for  
20 some time.

21 Q. How long have you known him?

22 A. I don't recall.

23 Probably -- actually hold on. Let me  
24 think about that. I met Mr. Farina in  
25 2008.

1 KARIUKI

2 A. No, I did not. Other  
3 than -- let me take that back. I knew her  
4 from being a salesperson at Santander, but  
5 I did not know her prior to her joining  
6 Santander.

7 Q. I see. You knew her from -- you  
8 guys worked for the same bank essentially?

9 A. We sat 12 feet apart for some  
10 time before I became her manager.

11 Q. Prior to taking over the IG  
12 sales team, did you discuss Mr. Sherman  
13 with anyone?

14 A. Not that I could recall.

15 Q. Did you discuss Mr. Tolkin with  
16 anyone?

17 A. Not that I could recall.

18 Q. Did you discuss Mr. Barker with  
19 anyone?

20 A. Yes, because he was -- he was on  
21 the EM sales team prior to joining the IG  
22 sales team.

23 Q. So you supervised him for a  
24 while?

25 A. I supervised Jeff Barker as an

1 KARIUKI

2 people working from home. They  
3 crash -- excuse me. They crash probably  
4 three times -- somebody's computer crashes  
5 three times a week.

6 Q. Has your computer ever crashed?

7 A. Yes.

8 Q. How many times?

9 A. Over what period of time?

10 Q. Since Covid and after you've  
11 been working from home.

12 A. In total I don't know. Not  
13 functioning properly or crash, I don't  
14 know. Fifteen, twenty times.

15 Q. Since March of 2020?

16 A. Is that when Covid first hit?  
17 Yes.

18 Q. Are you asking me or you are not  
19 sure when Covid first hit?

20 A. I am not sure exactly when Covid  
21 first hit.

22 Q. Do you recall that it was in  
23 2020?

24 A. Yes.

25 Q. By the way, have you returned

1 KARIUKI

2 back to work in the office?

3 A. Not full time.

4 Q. Okay. How often do you go back  
5 to the office?

6 A. It varies.

7 Q. How does it vary?

8 A. So around the holidays we had a  
9 spike of cases in the office, so everyone  
10 returned home, and people have been home  
11 basically until now. A lot of the team is  
12 still home. Some folks have returned, but  
13 the majority of the team is still out.

14 Q. Okay. Let me ask you this  
15 question.

16 When Covid first struck,  
17 everyone was required to work from home,  
18 correct?

19 MR. BOYARSKY: Objection.

20 You can answer.

21 A. It was encouraged.

22 Q. It was encouraged. Okay. And  
23 who encouraged it?

24 A. Management.

25 Q. Did the salespeople on your team

1 KARIUKI

2 conversation you recall having with Mr.  
3 Minuesa about Ms. McKenna's performance?

4 A. Correct.

5 Q. Did you have that conversation  
6 before or after Mr. Minuesa asked you to  
7 identify the two worst performers?

8 MR. BOYARSKY: Objection.

9 You can answer. I think that was  
10 after. I am pretty sure it was  
11 after.

12 Q. Did you have a prior  
13 conversation where Mr. Minuesa asked you  
14 to identify the two weakest performers?

15 MR. BOYARSKY: Objection.

16 You can answer.

17 A. Can you please rephrase the  
18 question?

19 Q. Sure.

20 Prior to discussing  
21 Ms. McKenna's performance with Mr.  
22 Minuesa, did you have a conversation with  
23 him where he asked you to identify the two  
24 weakest performers?

25 A. Yes.



1 KARIUKI

2 Q. What did he say during that  
3 conversation?

4 A. He said that it is important  
5 that we keep the team -- we refresh the  
6 team, and so we need to identify -- you  
7 need to identify the two weakest  
8 performers on the team, and we need to  
9 work on exiting them and making sure that  
10 our team is fit moving forward.

11 Q. Do you recall what you said in  
12 response?

13 A. I said okay. I can do that.

14 Q. Do you recall anything else that  
15 you and Mr. Minuesa said to each other  
16 during that conversation?

17 A. I do not.

18 Q. And was he asking you to  
19 identify two members -- the two weakest  
20 members in each EM and IG sales?

21 MR. BOYARSKY: Objection.

22 You can answer.

23 A. No. He asked me to identify  
24 the two weakest members of the sales team.

25 Q. Of the sales team.

1 KARIUKI

2 And what do you understand that  
3 to mean by the sales team?

4 A. We were -- it was within the  
5 context of -- you know, I don't recall.  
6 I don't even want to guess. I don't  
7 recall.

8 Q. Did he also ask you to identify  
9 the two weakest members -- to rank the  
10 members of the Latam team?

11 A. No.

12 Q. Do you recall him doing that?

13 A. Yes.

14 Q. When was that?

15 A. That was when I -- shortly after  
16 I assumed responsibilities as head of the  
17 EM sales desk.

18 Q. I see. And what did he say  
19 about -- so that was before he asked you  
20 to identify the two weakest members of the  
21 sales team to let go, correct?

22 A. Yes. That was years before.

23 Q. Years before. Okay.

24 All right. So what did he say  
25 about identifying the two weakest members

1 KARIUKI

2 of the Latam team?

3 A. At that point he was just taking  
4 my temperature to say listen. You are  
5 running the team now. What do you think  
6 of the sales force?

7 Q. And did you then send him a list  
8 of Latam members' rankings?

9 A. I don't know if I sent him a  
10 list at that time.

11 Q. Did you send him a list at some  
12 later time?

13 A. I did.

14 Q. And why did you send him a list  
15 at the later time?

16 A. Because he asked me to rank  
17 salespeople.

18 Q. Was that around the same time  
19 that he asked you to also rank the IG  
20 salespeople?

21 A. He asked me to rank the Latam  
22 and IG salespeople.

23 Q. Okay. And is that -- then you  
24 sent him a list with those rankings,  
25 correct?

1 KARIUKI

2 A. I did.

3 Q. Okay. And do you know why he  
4 was asking you to send him a list asking  
5 you for both rankings, so, in other words,  
6 IG and Latam?

7 A. No. But I am -- if I may add,  
8 this was -- he asks this of all the  
9 business heads. It wasn't just a sales  
10 thing. It was -- he had asked that of  
11 all his direct reports.

12 Q. But he asked you too, right?

13 A. He asked me in a group setting  
14 with all of his direct reports. It wasn't  
15 explicitly for Omar to rank salespeople.

16 Q. And then after you sent him  
17 those rankings, did you then have --

18 MR. LICUL: Withdrawn.

19 Q. Had the conversation where he  
20 asked you -- where he told you that he  
21 wanted to get rid of the two weakest  
22 performers in IG sales, was that after you  
23 sent him your rankings?

24 A. I don't recall the order.

25 Q. When you gave him your rankings,

1 KARIUKI

2 you said you crunched numbers, correct?

3 A. Yes.

4 Q. What numbers did you crunch?

5 A. So I had to look at sales credit  
6 numbers.

7 Q. Any other numbers you crunched?

8 A. No. I think that is about it,  
9 number crunching.

10 Q. And what else did you do to rank  
11 the different salespeople?

12 A. I'm sorry. Say -- can you  
13 please repeat your question?

14 Q. Other than crunching numbers,  
15 what else did you consider when you ranked  
16 the salespeople?

17 A. The other stakeholders with whom  
18 sales interacts with.

19 Q. Did you seek their input?

20 A. Yes, I did.

21 Q. And who were those stakeholders?

22 A. Syndicate.

23 Q. Okay.

24 A. DCM.

25 Q. Anyone else?

1 CONFIDENTIAL - KARIUKI

2 Q. What did she do?

3 A. She had a client that left  
4 Goldman Sachs Asset Management to go to  
5 Citadel. Rather than letting anyone know  
6 that she -- rather than letting anyone  
7 know that her client moved to Citadel, she  
8 misled another member of -- she misled a  
9 member of our team by asking him to join  
10 her for a meeting, and it turned out she  
11 was going to see someone else's client  
12 because someone else covered Citadel.

13 I only found out about it  
14 because that person on the research team  
15 came back to me and said listen. I did  
16 not feel good about this. I had no idea  
17 this was happening. She asked me to go  
18 with her for a meeting at Citadel meeting  
19 someone that she doesn't even cover any  
20 more. I felt that could have been -- that  
21 could have really fractured the team and  
22 was something that was not okay and kind  
23 of flies in the face of everything that  
24 our team represents.

25 MR. BOYARSKY: Before you ask

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CONFIDENTIAL - KARIUKI  
the next question, I ask that we  
designate this part of the transcript  
mentioning those two clients as  
confidential.

MR. LICUL: That's fine.  
(End of confidential portion.)

1 KARIUKI

2 Q. Who gave you this information  
3 about Ms. Zaccagnino?

4 A. One of the research people on  
5 our team. Guillermo Marino.

6 Q. And what did you do after you  
7 learned this information?

8 A. I had to think about it for a  
9 second and --

10 Q. Go ahead.

11 A. And then I spoke with Melissa  
12 about it.

13 Q. What did you tell her?

14 A. I didn't say a lot because, you  
15 know, sometimes a lot doesn't need to be  
16 said. She apologized. She said it was  
17 one of her biggest clients at Goldman.  
18 She was planning on letting the sales  
19 team, know, but, you know, she had -- on  
20 how to approach it, so this is what she  
21 decided to do.

22 Q. What was your response?

23 A. I said that is not okay. That  
24 undermines the trust that we all have for  
25 one another. We let people talk to our



1 KARIUKI

2 clients. If there is -- you know,  
3 people -- people talk to our clients. We  
4 let -- we talk to one another's clients.  
5 We go out together as a team sometimes  
6 with clients. We operate as a very close  
7 knit group. So doing things like that,  
8 which is selfish and undermining the team,  
9 could really create a fracture within a  
10 team that is hard to put back together.

11 Q. Who were the fellow salespeople  
12 that she was undermining?

13 A. Philip Sobey.

14 Q. And did you do anything other  
15 than talk to Ms. Zaccagnino about this?

16 A. No.

17 Q. Okay. And is there any other  
18 reason other than that this incident that  
19 you rated Ms. Zaccagnino as the worst  
20 performer on the Latam team?

21 A. Yes.

22 Q. And what was that reason?

23 A. So Melissa covered large  
24 accounts, but she tended to give the banks  
25 resources to accounts and to the -- to the

1 KARIUKI

2 people at these accounts that she liked as  
3 a opposed to people who could pay us  
4 for -- for what we were providing.

5 Q. Is there any other reason you  
6 ranked her last?

7 A. No.

8 Q. Did Ms. Zaccagnino take a  
9 maternity leave when she was under your  
10 supervision?

11 A. She did.

12 Q. When was that?

13 A. I don't recall.

14 Q. Did any other supervisees of  
15 yours ask for maternity leave?

16 A. I had someone take paternity  
17 leave.

18 Q. Who was that?

19 A. Ralph Trofa.

20 Q. When did he do that?

21 A. I don't recall.

22 Q. Was that while you were managing  
23 him in EM?

24 A. Yes.

25 Q. When you were head of EM only?

1 KARIUKI

2 team, correct?

3 A. I sent him rankings of each  
4 person on the IG sales team and the Latam  
5 sales team.

6 Q. Was it around this time?

7 A. I don't recall.

8 Q. How did you notify Mr. Minuesa  
9 that it was Mr. Barker and Ms. McKenna who  
10 are the two weakest performers in your  
11 view?

12 A. I told him in person.

13 Q. Okay. You didn't put that in  
14 an e-mail, correct?

15 A. I don't think so. No.

16 Q. All right. Let's fast forward.  
17 You described a conversation that you had  
18 with Ms. Yan where you asked whether this  
19 was still going forward?

20 A. Correct.

21 Q. What happens next with respect  
22 to the termination of Ms. McKenna?

23 A. Nothing up until I want to say  
24 like November.

25 Q. And do you recall that that is

1 KARIUKI

2 when you terminated her employment?

3 A. Yes.

4 Q. And what prompted you in  
5 November to terminate her employment?

6 MR. BOYARSKY: Objection. You  
7 can answer.

8 A. The timing was not my decision.  
9 The only reason I remember is it was two  
10 days after my birthday that I had to do  
11 this.

12 Q. So my question is you hear  
13 silence --

14 MR. LICUL: Withdrawn.

15 Q. First you asked Ms. Yan whether  
16 this is still going forward, and she says  
17 that yes, but we have processes, correct?

18 A. Right.

19 Q. And then there is silence for a  
20 period of time?

21 A. Right.

22 Q. Okay. And then what is the  
23 next thing you hear about terminating  
24 Ms. McKenna?

25 A. The next thing I hear from?

1 KARIUKI

2 Q. From anyone?

3 A. The next thing that I heard  
4 after I submitted those numbers was I got  
5 a Bloomberg chat from Ms. McKenna.

6 Q. Okay. And what did that  
7 Bloomberg chat say?

8 A. Hi, Omar. I just wanted to let  
9 you know that I am pregnant, and that is  
10 why I haven't been coming in to the  
11 office.

12 Q. And did you respond to that  
13 Bloomberg chat?

14 A. Yes.

15 Q. What did you say?

16 A. Congrats, Erin. You must be  
17 really excited.

18 Q. Did you have a conversation with  
19 Ms. McKenna?

20 A. Outside of that exchange, no.

21 Q. Did she also say to you in that  
22 Bloomberg chat that that is the reason she  
23 wouldn't be coming back to the office?

24 A. She did.

25 Q. And other than responding to

1 KARIUKI

2 Ms. McKenna, what else did you do in  
3 response to that Bloomberg chat?

4 A. Less than 45 seconds after  
5 receiving that Bloomberg chat from -- from  
6 Ms. McKenna, I copied and pasted that  
7 Bloomberg chat and sent it to Christina  
8 Yan and HR asking her if this changes  
9 anything.

10 Q. And what did you mean by that?

11 A. Well, someone that I had  
12 identified potentially to be laid  
13 off -- to be laid off just informed me  
14 that she was pregnant.

15 Q. Okay. And what did Ms. Yan say?  
16 How did Ms. Yan respond?

17 A. She responded by saying  
18 because -- because we have documentation  
19 that this was already in process before  
20 she told you that she was pregnant, we can  
21 move forward with the exercise.

22 Q. Is that what she said to you?

23 A. Yes.

24 Q. What else did she say?

25 A. That is all that I recall.

1 KARIUKI

2 Q. But at that time that you got  
3 the IM from Ms. McKenna, you weren't sure  
4 whether you were going forward, correct?

5 MR. BOYARSKY: Objection.

6 You can answer.

7 A. Well, at that -- at that point I  
8 had already asked her was this still  
9 happening, and she had told me yes, it was  
10 still happening.

11 Q. Okay.

12 A. And then Erin sent me this  
13 exchange, sent me this chat letting me  
14 know that she was pregnant, and then when  
15 I sent that to Christina I asked if that  
16 changed anything, and she said we were  
17 continuing because we had a practice that  
18 we were already in the process of doing  
19 this before she told you that she was  
20 pregnant.

21 Q. So she was concerned about a  
22 lawsuit?

23 A. I -- I don't -- I don't know  
24 what she was concerned about. I never  
25 asked her.

1 KARIUKI

2 Q. And when Ms. Yan tells you that  
3 you have proof, what did you understand  
4 that meant?

5 A. Meaning that we had already  
6 discussed this and there was already  
7 documentation I assume that we were  
8 already -- that because this was already  
9 happening that it didn't matter that she  
10 said that she was pregnant, you know, a  
11 couple of months after we had already  
12 decided that she was going to be laid off.

13 Q. Now, prior to Ms. McKenna's  
14 Bloomberg IM to you, Ms. Yan told you that  
15 there were processes that you still had to  
16 go through, correct, about terminating  
17 Ms. McKenna's employment, right?

18 MR. BOYARSKY: Objection.

19 You can answer.

20 A. I may be mistaken, sir, but I  
21 don't recall saying that Christina Yan  
22 said that there were still processes. I  
23 recall you asking me if I decided that she  
24 should be fired, she and Jeff should be  
25 fired. Why didn't it happen, and I said



1 KARIUKI

2 A. I don't believe it is true  
3 actually.

4 Q. And what is your basis for not  
5 believing it is true?

6 A. Sure. Because we also did  
7 a -- we did a transaction that the sales  
8 credits had not hit yet, but it was a  
9 liquid security that we had, and it  
10 was -- it had a long settle date. It was  
11 like a three-week or a month settle date.  
12 So I don't know how -- what that trade  
13 factored in, how they ended the year.  
14 But as I was telling you before in the  
15 beginning of our conversation,  
16 that -- that decision in terms of efficacy  
17 of sales is not just based upon a gross  
18 number. There is primary and secondary  
19 sales credits.

20 Q. But you -- go ahead. Sorry.  
21 Finish.

22 A. With secondary sales credits  
23 value is really added for a sales team,  
24 and that is the way it's been explained as  
25 long as I have been at the bank. It is

1 KARIUKI

2 the way in which we look at the business.  
3 It is DCM that takes credit for primary.  
4 It is syndicate that takes credit for  
5 primary. There are bankers that take  
6 credit for primary, the other people who  
7 could take credit for secondary sales and  
8 trading. Tom Steckroth's numbers, if we  
9 are talking about him specifically, I  
10 believe were comparable to that of Erin  
11 McKenna, maybe higher.

12 Q. So you think they were  
13 comparable maybe hire, but you decided to  
14 fire Ms. McKenna and not Mr. Steckroth?

15 A. I decided to fire Ms. McKenna  
16 and Jeff Barker because I had to identify  
17 the two lowest producers on my team.  
18 There was no -- there is data that  
19 supports that. I -- yes. There was  
20 data that supported that, and, you know,  
21 I -- the only thing I had -- the only  
22 thing that I did was just use numbers and  
23 incorporates feedback and make a decision  
24 based on that.

25 Q. Listen to my question.